

Thomas M. Williams
312-321-4717
twilliams@brinkshofer.com

BRINKS
HOFFER
GILSON
& LIONE®

A Professional Corporation

Intellectual Property
Law Worldwide

Date of Mailing: November 22, 2006

COMMISSIONER FOR TRADEMARKS
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

TTAB

Re: Nextel Communications, Inc. v. Motorola, Inc.
Opp. No.: 91/161,817
App. No.: 78/235,618
Mark: Sensory Mark (911 Hz tone)
Our File No. 7717/138

Dear Sir/Madam:

Enclosed for filing are the following documents:

1. Applicant's Notice of Reliance.

If you have any questions, please contact the undersigned at the above telephone number.

Very truly yours,



Thomas M. Williams

Enclosure

11-28-2006

U.S. Patent & TMO/c/TM Mail Rpt Dt. #22

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451, on

November 22, 2006

(date of deposit)

Thomas M. W. Jones

(name of person signing certificate)

Thomas M. W. Jones

(signature)

November 22, 2006

(date of signature)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

NEXTEL COMMUNICATIONS, INC.,)	
)	
Opposer,)	
)	
v.)	Opp. No.: 91/161,817
)	App. No.: 78/235,618
MOTOROLA, INC.,)	Mark: Sensory Mark
)	(911 Hz tone)
)	
Applicant.)	
)	

APPLICANT'S NOTICE OF RELIANCE

Applicant Motorola, Inc. ("Motorola" or "Applicant"), pursuant to Trademark Rules 2.120(j)(5) and 2.120(j)(1) of the Trademark Rules of Practice, 37 C.F.R. §§ 2.120(j)(5), (j)(1), hereby introduces into evidence the following:

I. Opposer's Discovery Responses:

A. Opposer's Responses to Applicant's Interrogatories

Pursuant to Trademark Rule 2.120(j)(5), 37 C.F.R. § 2.120(j)(5), Applicant designates the following Responses to Applicant's Interrogatories made by Opposer:

Opposer's Responses to Interrogatories Nos. 6, 7, 8, and 10.

Copies of these Responses are attached hereto at Tab A.

II. Opposer's Discovery Deposition Testimony:

A. Discovery Deposition of Opposer's Rule 30(b)(6) Designee

Pursuant to Trademark Rule 2.120(j)(1), 37 C.F.R. § 2.120(j)(1), Applicant designates and makes part of the record of this case the following portions of the discovery deposition of Opposer's Rule 30(b)(6) designee, Ms. Allison S. O'Reilly, who at the time of the deposition served as Opposer's Director – Promotions and Retail Marketing, taken on July 26, 2005:

Page and line: p. 25, lines 10-14.

Page and line: p. 27, lines 1-25.

Page and line: p. 28, lines 1-23.

Page and line: p. 31, lines 22-25.

Page and line: p. 32, lines 1-25.

Page and line: p. 33, lines 1-11.

Page and line: p. 33, lines 20-25.

Page and line: p. 34, lines 14-25.

Page and line: p. 35, lines 1-15.

Page and line: p. 36, lines 10-25.

Page and line: p. 37, lines 1-16.

Page and line: p. 43, lines 8-12.

Page and line: p. 43, lines 24-25.

Page and line: p. 44, line 1.

Page and line: p. 45, lines 15-20.

Page and line: p. 46, lines 24-25.

Page and line: p. 47, lines 1-11.

Page and line: p. 55, lines 10-12.

A copy of these deposition transcript pages is submitted at Tab B. (This deposition transcript is filed under seal in an attached envelope because it was designated by Opposer as "Confidential—Attorney's Eyes Only" pursuant to the Protective Order.)

III. Other Evidence

In addition to the above evidence which is introduced into evidence by way of this Notice of Reliance, Applicant gives notice that it intends to rely upon the following further evidence:

A. Testimonial Depositions

Applicant hereby gives notice that pursuant to Trademark Rule 2.123, the following testimonial depositions were taken during Opposer's and Applicant's respective testimony periods and have been or will be filed with the Board:

1. Opposer's testimonial deposition of Mr. Henrik Rasmussen
2. Opposer's testimonial deposition of Mr. Thomas Hoyes
3. Applicant's testimonial deposition of Mr. David Klein
4. Applicant's testimonial deposition of Mr. Michael Rappeport

Dated: November 22, 2006



John T. Gabrielides
Thomas M. Williams
BRINKS HOFER GILSON & LIONE
455 N. Cityfront Plaza Drive, Suite 3600
Chicago, Illinois 60611-5599
Telephone: (312) 321-4200
Facsimile: (312) 321-4299
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of APPLICANT'S NOTICE OF RELIANCE was served on counsel for Opposer on November 22, 2006, via First Class Mail, postage prepaid to:

John Stewart
Crowell & Moring LLP
1001 Pennsylvania, Avenue, N.W.
Washington D.C. 20004



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

NEXTEL COMMUNICATIONS, INC.,)	
)	
Opposer,)	
)	
v.)	Opp. No.: 91/161,817
)	App. No.: 78/235,618
MOTOROLA, INC.,)	Pot. Mark: SENSORY MARK
)	(911 Hz tone)
Applicant.)	
)	

**OPPOSER'S RESPONSE TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 33, Opposer, Nextel Communications, Inc. ("Opposer") responds to Applicant Motorola, Inc.'s ("Applicant") First Set of Interrogatories [Nos. 1-10].

GENERAL OBJECTIONS

1. Opposer objects to the interrogatories to the extent that they request information that is covered by the attorney-client privilege and/or work product doctrine or any other applicable privilege. Any responsive documents will be reflected on a privilege log at the appropriate time.

2. Opposer objects to each interrogatory that purports to impose upon Opposer any obligation greater than or different from those required under the Federal Rules of Civil Procedure, the rules of the Trademark Trial and Appeal Board, or applicable case law.

6. Describe how and to whom Opposer's two-way radios are marketed, promoted, sold, and distributed, and identify the three individuals employed by or on behalf of Opposer who are most knowledgeable about the subject of this interrogatory.

RESPONSE: In addition to the General Objections set forth above, Opposer objects to this interrogatory in that it is vague, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, to the extent that it calls for information relating to Opposer's different products and services marketed, promoted, sold and distributed under various marks. Subject to and without waiving its objections, Opposer states that it does not market, promote, sell or distribute two-way radios that emit the 911 Hz tone as claimed in Applicant's application.

7. Describe in details the facts and circumstances surrounding Opposer's first knowledge of Applicant's Mark, Applicant's use of the Mark, and of Application No. 78/235,618, and identify the three individuals employed by or on behalf of Opposer who are most knowledgeable about the subject of this interrogatory.

RESPONSE: In addition to the General Objections set forth above, Opposer objects to this interrogatory to the extent it seeks to invade the attorney-client privilege and/or attorney work product doctrine. Opposer further objects to the use of the term "Applicant's Mark" in that Applicant has not shown that it has used the 911 Hz tone claimed in its application in a manner that qualifies as trademark use in commerce. Subject to and without waiving its objections, Opposer states that it first learned that Applicant was claiming it had trademark rights in the 911 Hz tone that emits from Applicant's two-way radios when it became aware of Opposer's trademark application.

8. Describe in detail the facts and circumstances surrounding any instance in which a person has been, or may have been, confused as to the source of Applicant's two-way radios or for any service provided by Applicant in connection with such radios, and identify the three individuals employed by or on behalf of Opposer who are most knowledgeable about the subject of this interrogatory.

RESPONSE: In addition to the General Objections set forth above, Opposer objects to the use of the term "confused" in that it is vague, ambiguous and calls for a legal conclusion. Subject to and without waiving its objections, Opposer states that it is not aware of any instances of confusion as to the source of Applicant's two-way radios or any service provided by Applicant in connection with such radios.

10. Describe in detail all facts relating to Opposer's contention that it will be damaged if Applicant's Mark is registered (§ 11 of Notice of Opposition), and identify the three individuals employed by or on behalf of Opposer who are most knowledgeable about the subject of this interrogatory.

RESPONSE: In addition to the General Objections set forth above, Opposer objects to this interrogatory in that it invades the attorney client privilege and/or work product doctrine. Opposer further objects to the use of the term "Applicant's Mark" in that Applicant has not shown that it has used the 911 Hz tone claimed in its application in a manner that qualifies as

trademark use in commerce. Subject to and without waiving its objections, Opposer states that it sells wireless phones and devices that incorporate electronic tones, that Opposer and Applicant are business partners and that Applicant manufactures wireless phones and devices for Opposer and Opposer's competitors.

Respectfully submitted,

April 25, 2005



John I. Stewart, Jr.
Attorney for Opposer

CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-5116

B